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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 10/059,586 | 01/29/2002 | Hermann D. Funke | P-8110 | 5821 |
| 27581 | 7590 | 04/24/2006 | EXAMINER | |
| MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924 | | | EVANISKO, GEORGE ROBERT | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3762 | |

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---|------------------------|---------------------|
| Advisory Action Before the Filing of an Appeal Brief | Application No. | Applicant(s) |
| | 10/059,586 | FUNKE, HERMANN D. |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) They raise the issue of new matter (see NOTE below);
- (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

- 4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5. Applicant's reply has overcome the following rejection(s): _____.
- 6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 22-39.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

- 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
- 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

- 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
- 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
- 13. Other: _____.

George R Evanisko
Primary Examiner
Art Unit: 3762

4/26/6

Continuation of 3. NOTE: the deletion of "and upon said...IMD" or "memory means...threshold" in the independent claims will require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: the argument that Vock does not teach the determination of the HF interference signal when it "exceeds a...threshold" is not persuasive. Vock teaches that when interference is detected that the interference mode/stimulation is started. It is inherent that a threshold must be used in the detection since the interference mode does not start by itself. In other words, at some point, the system MUST determine the signal is over some type of threshold in order that interference be detected. In addition, Vock says that interference is detected by use of noise sample windows (column 4) and therefore the interference MUST be over some threshold for interference to be detected. There is no other way the system can detect interference without a threshold. Finally, as pointed out in the 103 rejection and in the previous response to arguments, several other prior art references teach the use of detecting HF interference and by detecting when the signal exceeds a threshold, such as 5697958 and 4091818 .